



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chief Yeoman Celestino Moreno, USN (Retired) -
Home of Selection in Philippines - Household Goods
Transportation
File: B-226430
Date: December 4, 1987

DIGEST

A Navy member visited the Philippines 5 years after retirement from the Navy with the stated intention of personally residing there 3 years later, when he planned to resign from employment with the United States Postal Service in California. A few days after his arrival and receipt of his household goods shipped there at government expense, he sold his goods and he and his wife returned to their residence in the United States. The member's plan to have his wife begin residence in the Philippines did not entitle the member to have his household goods transported there as a shipment "to his home of selection" at government expense, since he did not establish residence there.

DECISION

Chief Yeoman Celestino Moreno, USN (Retired), appeals a determination of our Claims Group that he was not entitled to the transportation of his household goods to the Philippines, as his home of selection upon retirement, and that he is indebted to the United States for the cost of transportation. We agree with the Claims Group's determinations.

BACKGROUND

Mr. Celestino Moreno retired from the Navy on March 31, 1976. He continued to reside with his wife in a personally-owned house in Hayward, California, which was also his home of record. Ordinarily a service member has 1 year from the date of his retirement to select his home upon retirement and initiate shipment of his household goods there. In this case, however, upon retirement Mr. Moreno apparently entered training and secured employment in September 1976 with the United States Postal Service in Newark, California. More than 5 years later, in October 1981, Mr. Moreno shipped his household goods at government expense to Olongapo City, the Philippines, on the basis that it was his home of selection upon retirement from the Navy. This was done, according to a statement he made to the Naval Investigative Service, in anticipation of establishing a permanent residence in the

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Philippines when Mr. Moreno planned to retire from his employment with the Postal Service in 1984.

Why the service shipped Mr. Moreno's goods more than 5 years after his retirement is unclear. The administrative report states that Mr. Moreno was granted an extension of time in which to ship his household goods. Paragraph M8262-5.1 of Volume 1 of the Joint Travel Regulations, which is cited as authority, states that an extension may be granted "for a period not later than 1 year after completion of the education or training or 2 years after the date of termination of active duty, whichever is earlier * * *." A copy of a letter dated April 26, 1977, to Mr. Moreno advising him of the extension of the time limitations referred to above was included with the administrative report. Unless a further extension was granted that is not reflected in the record before us, his extension would have expired at the latest in March 1978. Thus, on the basis of the record before us, the shipment appears to have been made after the approved time period expired.

In any event, in January 1982 Mr. Moreno traveled with his wife to the Philippines to clear their household goods through customs. During that visit the Morenos stayed with Mr. Moreno's sister about 3 weeks before returning to the United States. Other visits by Mr. Moreno of 2 or 3 weeks duration followed, including trips in June, July, and August 1982. During this entire period Mr. Moreno retained ownership of his California property, retained his California mailing address, and retained his employment with the Postal Service.

Mr. Moreno states that a few days after clearing his goods through customs in the Philippines in January 1982, he changed his mind about residing permanently in the Philippines. He sold most of his household goods and returned to the United States, giving as reasons unstable political conditions and his disgust with the manner in which he was treated by Philippine customs officials.

Based on these facts the Navy Material Transportation Office submitted the matter to our Office for a determination of whether Mr. Moreno was entitled to ship his household goods to the Philippines at government expense in view of its doubt that Mr. Moreno ever established a residence there. Our Claims Group determined that Mr. Moreno's visits to the Philippines did not constitute actual and continued residence, as required by our interpretation of the law and

relevant regulations, and concluded that he was not entitled to the transportation.^{1/} The agency was advised that the cost of the shipment (\$9,747.71) constituted an erroneous payment for which Mr. Moreno was indebted to the United States.

In his appeal, Mr. Moreno alleges the additional fact that when he and his wife traveled to the Philippines (apparently in January 1982) it was his intent that his wife would remain and establish residence in their rental property in Olongapo City while he returned to the United States. This plan was not implemented since the Morenos returned to the United States.

DISCUSSION

The liability of the government for the cost of transporting a member's household goods incident to military retirement to a home of selection is limited to that specifically authorized by 37 U.S.C. §§ 404 and 406, as implemented by the regulation in Volume 1 of the Joint Travel Regulations. See Louis W. Dampier, USNFR, B-198936, Jan. 6, 1981.

At the time in question, 37 U.S.C. § 404(c) provided in pertinent part that a member of a uniformed service who is retired may, not later than 1 year from the date he is so retired, except as provided by regulations, select his home for the purposes of his personal travel and transportation allowances authorized by subsection (a) of that section. Section 406 of title 37, United States Code, provided in subsection (g) that under regulations prescribed by the Secretaries concerned, a member who is retired is entitled to transportation for his dependents, baggage and household effects to the home selected under 37 U.S.C. § 404(c).

Paragraph M4158 of Volume 1, Joint Travel Regulations, implementing section 404(c) of title 37, United States Code, provided in subparagraphs 1a and 2a that a member on active duty who is retired or transferred to the Fleet Reserve may, not later than 1 year from the date of retirement, except as provided by regulations, select his home and be entitled to travel and transportation allowances thereto from his last

^{1/} Claims Group letter, Z-2850065, of January 16, 1986, to the Navy Material Transportation Office.

duty station. Paragraph M8262-1 authorized the shipment of household goods to his home of selection at government expense.

As indicated previously, the regulations made provision for granting extensions of the 1-year time limitation; however, the record in the case indicates that the extension granted would have expired at the latest in 1978, over 3 years before the shipment was made, and thus the shipment would have been improper. It is not necessary to delve further into that matter because, as is explained below, we find that the Philippines does not qualify as Mr. Moreno's home of selection.

Appendix J of the Joint Travel Regulations defined "home of selection" as used in the regulations to mean the place selected by a member as his home upon retirement. In interpreting and applying these or essentially similar statutory and regulatory provisions, we have held for many years that the member must have the intent to establish a home at the selected place at the time he performs the travel to it in order to be entitled to the transportation at government expense. Travel for the purpose of a visit, vacation, or business following separation does not qualify. 52 Comp. Gen. 242 (1972); 36 Comp. Gen. 774 (1957). The intent at the time of travel to establish a home sometime in the future does not satisfy the requirement to establish the home within the time prescribed by law. See Major Edward R. Lesesne, USA, Retired, B-209044, Mar. 1, 1983.

The issue presented by Mr. Moreno's new allegation is whether a member proves the intent to establish a home at a selected place at the time he performs travel to it by planning to have his wife reside in the selected place. Our holding that Mr. Moreno did not establish the requisite intent is based on the general principle that entitlements are personal to the member. See 61 Comp. Gen. 62, 65 (1981). As previously noted, we have held for many years that members must establish the necessary intent at the time they performed travel to the home of selection. Here, since the member merely visited the alleged home of selection with the intention at the time of travel to establish permanent residence there only 3 years later, he did not establish the requisite intent. See Major Edward R. Lesesne, USA, Retired, B-209044, supra, and cases cited therein. Therefore, even if Mr. Moreno's time to ship his household goods was extended until 1982, as appears doubtful from the record, we cannot find that he selected the Philippines as

his home incident to retirement from the Navy and established a home there at the time he had his goods shipped there in 1981-1982.

Accordingly, the determination made by our Claims Group that Mr. Moreno is indebted to the United States for the cost of the transportation is sustained.

A handwritten signature in black ink that reads "Milton J. Hoster". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States